

M. A. Harrison Manufacturing Company, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Cases 8-CA-13285 and 8-CA-13032

June 8, 1981

DECISION AND ORDER

On January 8, 1981, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in response to Respondent's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, M. A. Harrison Manufacturing Company, Inc., Birmingham, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Include the following as paragraph 1(c):

¹ In his recommended notice to employees, the Administrative Law Judge included injunctive language providing that Respondent would not in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Sec. 7 of the Act. However, the Administrative Law Judge inadvertently failed to include the injunctive language in his recommended Order. We have modified the recommended Order by including the appropriate injunctive language.

The Union-Charging Party herein was certified by the Board as the exclusive bargaining representative of Respondent's production and maintenance employees on May 18, 1978. The last negotiating session held by the parties took place on May 17, 1979.

Respondent argues in its brief that its refusal to bargain with the Charging Party after the expiration of the certification year was lawful under the Act since it believed that the Charging Party was in fact a minority union, and it had a good-faith doubt as to the Charging Party's majority status.

We note that in addition to the unfair labor practices found herein, the Board found in *M. A. Harrison Manufacturing Company, Inc.*, 253 NLRB 675 (1980), a related case issued by the Board on December 10, 1980, that Respondent herein violated Sec. 8(a)(5) during the certification year on five separate occasions and, furthermore, was "engaging in a course of conduct constituting bad-faith bargaining with no intention of reaching agreement on a collective-bargaining contract."

In order to fully effectuate the policies of the Act, and to provide the parties with a meaningful opportunity to bargain in good faith for a collective-bargaining agreement, we have modified the recommended Order herein and have ordered that the certification year be extended through 1 year after Respondent commences to bargain in good faith pursuant hereto. See, generally, *Glomac Plastics, Inc.*, 234 NLRB 1309 (1978), and *Big Three Industries, Inc.*, 201 NLRB 700 (1973).

"(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Recognize and, upon request, bargain collectively with the above-named Union as the exclusive representative of all its employees in the appropriate unit described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. Regard the Union as exclusive agent as if the initial year of certification has been extended for an additional year from the commencement of good-faith bargaining pursuant to the Board's Decision and Order."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain collectively with the Union as the exclusive bargaining representative of our production and maintenance employees.

WE WILL NOT threaten to inflict bodily injury on striking employees, damage the property of striking employees, tell employees that the Union cannot win and that they might as well give up, threaten returning strikers with reprisals, or threaten to close the plant.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, upon request, bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative of all our production and maintenance workers at our Birmingham, Ohio, plant, excluding office clerical employees, guards and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. WE WILL regard the

Taylor was leaning against his car kicking and pounding Carrender's car. Miller testified that he heard Taylor say, "I'm going to get you goddamn strikers." Then, when Carrender drove off and Taylor gave up chasing her car, he returned to where Miller had remained and challenged Miller to get out of his car. Miller apparently declined to do so and Taylor went back into the plant. Miller then heard Taylor say to an unidentified individual, "Give me my gun, I'll just shoot all of the picketers."

With or without the provocation described by Taylor in his testimony, I find the threats made by Taylor and his damaging of Carrender's car violative of Section 8(a)(1) of the Act. Since Taylor is admittedly a supervisor under the Act, his actions are attributable to Respondent even though he was not specifically directed to engage in the violative activity.⁷

The complaint alleges that on or about July 18, 1979,⁸ through M.A. Harrison its president, Respondent interrogated an employee regarding the whereabouts and activities of other striking employees; informed an employee on more than one occasion that it would be futile for employees to select the Union as their bargaining representative by stating that no one was going to tell him what to do, threatened striking employees with unspecified reprisals upon their return to work, unlawfully coerced an employee by accusing said employee of participating in various alleged acts of violence which occurred at Respondent's facility during the strike, and unlawfully threatened to close the plant because the employees selected the Union as their bargaining representative.

With regard to these allegations, Carrie Neely, a striking employee⁹ of Respondent, testified that on or about July 18 she was working as a part-time bartender and short order cook at the Park Inn in Birmingham, Ohio. That night M. A. Harrison came into the bar and said, "Where is my damn strikers?" Neely replied that she did not know. Harrison then asked, "What do you mean you don't know?" Neely repeated that she did not know. Harrison then stated, "I can tell you . . . Your union can't win, you may as well give up." A conversation then ensued concerning Harrison's failure to pay his employees better wages and to provide insurance for them. The subject then turned to certain damage which had been done at Respondent's foundry. In particular, Harrison alluded to 168 tires which had been slashed. Neely stated that she did not know anything about the tires but Harrison, becoming somewhat angry, stated, "Oh, hell, yes you do." When Neely again denied causing any of the damage, Harrison insisted, "Oh yes, you was one of them." He added: "When you people come back to work, you're going to get the same damn treatment." Neely asked, "You mean, Mr. Harrison, I'm going to get the same thing done to me?" Harrison replied, "Oh, hell

yes. Why not? You did it to me." An unidentified man sitting at the bar said, "Mr. Harrison, that sounds like a threat." Harrison replied, "Hell yes, by God it is!"

After another striking employee, Joe Hambley entered the bar, Harrison engaged him in conversation also. Either to Neely, to Hambley, or to both Harrison made the statement that no union was coming in there and tell him what to do. He stated that he would "shut the damn place down." In all, Harrison remained in the bar about 2 hours talking to Neely and Hambley about the above matters and others.

Concerning the events of July 18 which gave rise to the 8(a)(1) allegations in the complaint, I find Harrison's single, apparently rhetorical question, as he entered the bar, "Where is my damn strikers?" more like an off-handed salutation than serious interrogation designed to obtain information concerning "the whereabouts and activities of other striking employees" as alleged in the complaint. I find this to be the case not only because the subject matter was not pursued by Harrison to any great depth but because at the time, the strike was already over, there were no strikers and both Neely and Harrison knew this. I find no violation here.

I find, however, that in the total context of the conversation Respondent, through M. A. Harrison, violated Section 8(a)(1) by stating, "I can tell you . . . your union can't win, you may as well give up"; by telling Neely, after discussing damage at the plant, "When you people come back to work, you're going to get the same damn treatment," then more or less repeating the same statement a second time, and finally explicitly stating that he meant his statement to be taken as a threat; and by stating that no union was going to come in and tell him what to do, that he would "shut the damn place down." These statements were clearly coercive in nature, and by making them Harrison and therefore Respondent interfered with the employees' Section 7 rights as set forth in the Act. Respondent thereby violated Section 8(a)(1).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent M. A. Harrison Manufacturing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees at Respondent's Birmingham, Ohio, plant, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

⁷ *Edwards Brothers, Inc.*, 95 NLRB 1451 (1951). Respondent moved for dismissal of the allegation involving Taylor on grounds that the Regional Director for Region 8 had no authority to issue a complaint concerning this allegation because the General Counsel had refused to issue complaint thereon. It would appear, however, that the allegations upon which the General Counsel refused to issue a complaint involved similar but different activities. I therefore deny Respondent's motion.

⁸ At the time of this incident, the strike had already concluded.

⁹ Though by July 18 the strike was over, Neely had not yet been recalled.

4. On or about May 18, 1978, a majority of the employees in the unit described above designated or selected the Union as their representative for the purposes of collective bargaining with Respondent.

5. Since on or about May 18, 1978, and at all times material herein, the Union has been, and is now, the exclusive representative for purposes of collective bargaining of the employees in the appropriate bargaining unit described above, and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said bargaining unit for the purposes of collective bargaining with Respondent with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.¹⁰

6. Since on or about October 17, 1979, and at all times thereafter, Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive bargaining representative of all the employees in the unit described above in that on or about October 17, 1979, and at all times since said date, Respondent has refused and continues to refuse to meet with the Union for the purposes of collective bargaining.

7. By threatening to inflict bodily injury upon striking employees, damaging the property of striking employees, telling employees that the Union can not win and that they might as well give up, threatening returning strikers with reprisals, and threatening to close the plant, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. By the aforesaid refusal to bargain Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take appropriate affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹¹

The Respondent, M. A. Harrison Manufacturing Company, Inc., Birmingham, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with the Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees at the Employer's plant in Birmingham, Ohio, excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Threatening to inflict bodily injury on striking employees, damaging the property of striking employees, telling employees that the Union can not win and that they might as well give up, threatening returning strikers with reprisals, and threatening to close the plant.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Recognize and upon request bargain collectively with the above-named Union as the exclusive representative of all its employees in the appropriate unit described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Birmingham, Ohio, copies of the attached notice marked "Appendix."¹² Copies of said notice on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to assure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹² In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁰ *M. A. Harrison Manufacturing Company, Inc.*, 253 NLRB 675 (1980).

¹¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the